

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Review of the Decision of the)	
Universal Service Administrator by)	
)	
Concord School District)	File No. SLD-380786
Concord, New Hampshire)	
)	
Floyd County Board of Education)	File Nos. SLD-336264, 359695
Prestonsburg, Kentucky)	
)	
Fordland R-III School District)	File No. SLD-344057
Fordland, Missouri)	
)	
Hull Christian School)	File No. SLD-337005
Hull, Iowa)	
)	
Mexicayotl Academy)	File No. SLD-373448
Nogales, Arizona)	
)	
Omega Alpha Academy)	File No. SLD-379483
Sierra Vista, Arizona)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: April 13, 2005

Released: April 13, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration Requests for Review filed by Concord School District, Concord, New Hampshire; Floyd County Board of Education, Prestonsburg, Kentucky; Fordland R-III School District, Fordland, Missouri; Hull Christian School, Hull, Iowa; Mexicayotl Academy, Nogales, Arizona; and Omega Alpha Academy, Sierra Vista, Arizona (collectively, Petitioners).¹ The Requests for Review seek review of decisions by the Schools and

¹Letter from Steve Rothenberg, Concord School District, to Federal Communications Commission, filed April 16, 2003; Letter from Debbie Dixon, Floyd County Board of Education, to Federal Communications Commission, filed August 26, 2003; Letter from William Marcus, Fordland R-III School District, to Federal Communications Commission, filed February 23, 2004; Letter from Ryan Zonnefeld, Hull Christian School, to Federal Communications Commission, filed April 14, 2003; Letter from Dora Alvidrez-Urias, Mexicayotl Academy, to Federal Communications Commission, filed July 8, 2003; Letter from Steve Carvalho, Omega Alpha Academy, to Federal Communications Commission, filed August 18, 2003 (collectively, Requests for Review). Any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Consistent with precedent, we deny the Requests for Review. To the extent that the Petitioners request a waiver of the Commission's rules, we deny those requests as well.²

2. Each of SLD's decisions at issue in the Requests for Review involves denial of funding because SLD found that the Petitioners filed all or part of their Funding Year 2003 FCC Form 471 application after the close of the filing window deadline. In the Requests for Review, Petitioners either assert that they believe the full FCC Form 471 application was filed within the filing window or concede that they filed the FCC Form 471 application after the close of the filing window.³ After review of the record, we find that Petitioners did not file complete FCC Form 471 applications by the close of the filing window.

3. Consistent with precedent, we deny the Requests for Review. The Commission's rules allow the Administrator to implement an initial filing period for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁴ We have strictly and consistently enforced the filing window deadlines for FCC Form 471 applications.⁵ Allowing applicants to file incomplete or late applications, and have those applications considered timely, would be unfair to the applicants who diligently filed their complete applications in a timely fashion. Because we find that the Petitioners' FCC Form 471 applications were filed outside of the window, we deny the Requests for Review.

4. To the extent that Petitioners additionally ask us to waive our rules in this instance, we also deny their requests. Waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the rule.⁶

5. We find that the Petitioners have not demonstrated special circumstances to warrant waiver. The Commission has strictly enforced filing deadlines, allowing waivers of deadlines only in very limited and compelling situations.⁷ In light of the large number of applications that SLD reviews

²47 C.F.R. § 1.3.

³*Id.* The deadline for Funding Year 2003 applications was February 6, 2003. See SLD website, <www.sl.universalservice.org/whatsnew/2002/122002.asp>.

⁴Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis. Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules. 47 C.F.R. § 54.507(c) and (g).

⁵See *Request for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 7383, 7389, para. 13 (Wireline Comp. Bur. 2002); *Request for Review by Wilmington Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-254818, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 12069 (Wireline Comp. Bur. 2002); *Request for Review by South Barber Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-158897, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 18435 (Com. Car. Bur. 2001).

⁶47 C.F.R. § 1.3. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷See *Petitions for Waiver or Reconsideration of Sections 54.706, 54.709, and/or 54.711 of the Commission's Rules, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Seventeenth Order on Reconsideration, 15 FCC Rcd 20769, 20783, para 28 (1999). See also *Request for Waiver by Stephen-Argyle Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of*

and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures, including filing deadlines.⁸ Hence, employee illness, staff failure to perform a job properly, inclement weather, misunderstanding of the rules, misinformation received from SLD, does not relieve applicants of their responsibility to comply with the Commission's rules and procedures.⁹ In addition, when timely filing is critical, it may be necessary for applicants to provide evidence of mailing to prove that a document was postmarked by the deadline.¹⁰ Further, the assertion that denial of an application may have a detrimental impact on an applicant does not create special circumstances or suggest particular facts that warrant a waiver of the Commission's rules.¹¹ In keeping with our prior decisions, we determine that the Petitioners here have not demonstrated the special circumstances necessary for a waiver of our rules.

Directors of the National Exchange Carrier Association, Inc., File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15879, 15880-81, paras. 4-5 (Com. Car. Bur. 2001).

⁸See *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612-13, para. 8 (Com. Car. Bur. 2000) ("In light of the thousands of applications that SLD reviews and process each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

⁹*Request for Waiver by Duncan Public Library, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-325536, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22430, 22431, para. 3 (Wireline Comp. Bur. 2003); *Request for Waiver by Dermott Special School District, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-252777, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 5091, 5093, paras. 3-5 (Com. Car. Bur. 2002). See also *Request for Waiver by Art In Context, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-262426, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 5087, 5089, paras. 6-8 (Com. Car. Bur. 2002); *Request for Waiver by Midland School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-269321, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 17920, 17922-23, paras. 5-6 (Com. Car. Bur. 2001).

¹⁰See *Request for Review by Jaffrey-Ringe Cooperative School, Federal-State Joint Board on Universal Service, Change to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-257632, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 9475, 9476-77, para. 4 (Wireline Comp. Bur. 2002); *Request for Waiver by Alpine County Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of the National Exchange Carrier Association, Inc.*, File No. NEC. 471.01-24-00.5400004, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 1718, 1721, para. 7 (Com. Car. Bur. 2002).

¹¹*Application for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 21521, 21528, para. 18 (2003).

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Requests for Review filed by Concord School District, Concord, New Hampshire, on April 16, 2003; Floyd County Board of Education, Prestonsburg, Kentucky, on August 26, 2003; Fordland R-III School District, Fordland, Missouri, on February 23, 2004; Hull Christian School, Hull, Iowa, on April 14, 2003; Mexicayotl Academy, Nogales, Arizona, on July 8, 2003; and Omega Alpha Academy, Sierra Vista, Arizona, on August 18, 2003, respectively, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson
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Wireline Competition Bureau